

APPEAL NO. 040730
FILED MAY 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 9, 2004. The hearing officer determined that the respondent's (claimant herein) compensable injury of _____, extends to a meniscus tear and cartilage defect to the medial and lateral menisci of the right knee, and that the claimant had disability from August 1, 2003, and continuing through the date of the CCH. The appellant (self-insured herein) files a request for review contending that these determinations were contrary to the evidence, and that the hearing officer erred in not admitting a carrier exhibit. The claimant responds that the evidence supported the decision of the hearing officer and that the decision should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant contended that she was injured at work from pushing on the brake pedal of a bus. The injury was disputed, but earlier it had been found to be compensable. There was conflicting evidence whether or not the injury extended to include a meniscus tear and/or cartilage defect to the medial and lateral menisci of the right knee. The claimant testified that she was unable to perform her preinjury job duties due to pain from her injury.

EVIDENTIARY RULING

The hearing officer excluded a carrier exhibit that was not timely exchanged. The carrier argued that it had good cause for the untimely exchange. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see also Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We find no abuse of discretion in the hearing officer's application of the exchange of evidence rules and perceive no error in the exclusion of the exhibit in question.

EXTENT OF INJURY

The carrier argues that the hearing officer erred in finding that the claimant's injury extends to a meniscus tear and cartilage defect to the medial and lateral menisci of the right knee. We have held that the question of the extent of an injury is a question

of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We do not find that to be the case here.

DISABILITY

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. There was conflicting evidence concerning disability in this case. Applying the standard of review discussed above we find no error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SD
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge